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Legal DEPARTMENT

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Subject:—

Appeals to the Bombay Revenue Tribunal from the Bar Dharwar District.

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K. J. Velankar

Superintendent,
D Branch, Legal Department.

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Appeal against order No.W.K.L.-3,dated 21st July 1941, of the Collector of Dharwar.

No. O-123 of 1942.
Via Poona, 11th April 1942.

Read:-
Appeal petition, dated 11th September 1941, of Venkatesh Shrinivas Kulkarni of Gokul, taluka Hubli, District Dharwar.

Opinion, No. B.R.T.-324, dated 15th January 1942, of the Commissioner, S.D. and Member, Bombay Revenue Tribunal.

Opinion, dated 11th April 1942, of Dewan Bahadur Shingne, Non-official Member, Bombay Revenue Tribunal.

Opinion, dated 11th April 1942, of Sir Govind Madgavkar, President, Bombay Revenue Tribunal.

Order.

This is an appeal by Mr. V.S.Kulkarni of Gokul, taluka Hubli, district Dharwar, against order No. W.K.L.-3, dated 21st July 1941, of the Collector of Dharwar, refusing to convert certain watan lands of which the appellant is the watan-dar into rayatwari lands.

2. The Collector refused to grant the appellant permission sought on the ground that the interests of the appellant's minor son would be prejudicially affected. It is conceded by Mr. Moropant who appears for the appellant that the appellant had been living separately from the child which is living with his mother for the last ten years. The appeal is sought to be supported on the ground that the appellant incurred debts in order to establish his adoption by the deceased Seenappa between the appellant and his natural brothe Ganesh and before us it was sought to obtain permission in respect of certain survey numbers totalling about 45 acres in extent and Rs.100/- in land revenue. Among the lands sought to be sold are landa in or near Hubli City which are propably more valuable than the other lands.

3. The law assumes that the Collector's consent will not be granted unless the appellant has obtained the consent of persons interested in the watan property. In the present case, actually the guardian of the minor son does not consent and is admittedly afraid that the appellant will squander away the property leaving her and the minor son resourceless. That ground appealed to the Collector and on the facts of the present case, her apprehensions are well grounded. On the whole, we see no sufficient reason to differ from the Collector's order and we, therefore, dismiss the appeal.

G.D. Madgavkar,

President,
Bombay Revenue Tribunal.

V.S. Bhide,

Commissioner, S.D. and Member,
Bombay Revenue Tribunal.

P. B. Shingne,

Non-official Member,
Bombay Revenue Tribunal.

Exhibit No. 16.

Appeal No. 732 of 1913 from Appellate Decree.

Mukund Gopinath Patil and others. (Orig. defts)...Appellants.

Vs.

Janmejaya Chhabildas and another sons and heirs of the deceased Chabildas Lallubhai, Orig. Plff). respondents.

Second Appeal against the decision of G.K.Kale, Esquire, Assistant Judge A.P. of Thana in appeal No. 299 of 1911.

Mr. Jayakar with Mr. R.W. Desai for the appellants.
Mr. H. C. Coyaji with Messrs.S.S.Patkar and D.S. Varda for the respondents.

Judgment. The suit out of which this appeal arises, was brought by the plaintiff for an injunction and restraining the defendants from working a quarry in a certain piece of land.

The plaintiff's suit was dismissed in the trial court but the plaintiff succeeded before the Assistant Judge. The present appeal is consequently brought by the defendants.

It seems to us that the record in this case would have been shorter, the judgments of the lower courts would have been more valuable and the waste of a great deal of learned and excellent argument would have been avoided if the courts attended more strictly to the pleadings between the parties and the actual point which was in controversy between them.

According to paragraph 2 of the plaint the only land in which the plaintiff asked that the defendants should be restrained from quarrying is described as warkas land measuring 11 acres 24 gunthas ,assessed at Rs.20-5-4 out of survey No. 34 in the village of Magathane. If the litigation had been confined to the piece of land thus clearly specified, there can be no doubt that the determination of it would have been easy, and there would have been no risk of confusing the parties' rights in respect to this portion of land with their rights in respect to other peices of land.

It is true that in the first paragraph of the prayer to the plaint the plaintiff seeks an injunction restraining the defendants from opening

opening a quarry in the land which we have already described "and in any other land in the village of Mouje Magathane and Eksar, and this striking variation between paragraphs 2 and 6 of the plaint appears to have escaped the notice of every body in the courts below. However that may be, paragraph 6 in the plaint seems to have been overlooked, and the record shows that in both the courts the suit was fought out on the footing that the only land in dispute was the 11 acres 24 gunthas of the warkas portion of survey No. 34.

Now in regard to this particular portion of the plaintiff's claim, it appears to us that the plaintiff must succeed. The discussions in the lower courts have mainly been devoted to ascertaining the true construction of Regulation I of 1808 as applied to the position of the plaintiff and the defendants. What seems to have escaped notice is that if this land is warkas land, as the plaintiff asserted it to be, then it is beyond question outside the scope of the Regulation. We are satisfied that the land is warkas and that this warkas character of it, which the plaintiff asserted, was accepted and acquiesced in by the defendants. The only clear piece of evidence on the record, Exhibit 32, also goes to show that that is the character of the land.

Upon this footing, that is, that the land is warkas, the defendants' position in regard to it is that of mere occupants under section 217 of the Land Revenue Code, and they have no authority to put it to any non-agricultural use without the approval of their superior holder, the plaintiff, who has obtained a commission under section 88 of the Code. That being the defendant's position, the plaintiff's situation is, we think equally clear. He claims under one Dady who, by a conveyance of 1819, obtained from Government all the rights to this land which then existed in Government. Now seeing that this land was warkas and was, therefore, unaffected by Regulation of 1808, the Government rights in this plot existing in 1819 included the rights to the underlying minerals, Those rights therefore, passed by the conveyance to the plaintiff's predecessor Dady and so to the present plaintiff.

That being so, the plaintiff must, we think, have a decree for the injunction which he seeks in regard to the 11 acres 24 gunthas of warkas land out of survey No. 34 as described in paragraph 2 of his plaint.

It should be clear from what we have already said that our judgment will not affect the rights of the parties to any other parcel of land whatever except that which we have just specified; in particular we pass no decision and express no opinion upon the parties' rights in respect to those other parcels of land which are alluded to in the first paragraph of the prayer clause of the plaint.

With regard to costs we think that on the whole each party should pay all his costs throughout. The reason why we do not allow the suceessful plaintiff the costs of this appeal is that we are by no means satisfied that the variance between paragraphs 2 and 6 of the plaint was accidental. Rather we are disposed to think that there was an effort made by the plaintiff to snatch a victory in regard to rice land or other lands while putting in open controversy only small portion of warkas land.

The decree of the lower court is varied accordingly.

15th February 1916.

Sd. S.L. Batchelor.

Sd. L. Shah.